
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Chester P. Coleman)	File Number: EB-03-AN-091
c/o American Radio Brokers, Inc.)	EB-03-AN-092
San Francisco, CA)	
)	NAL/Acct. No: 200532780003
Licensee of Broadcast Stations)	FRN: 0005037585
KAXX, AM, Facility ID 53491, 1020 kHz)	
Community of License – Eagle River, Alaska)	
)	
KADX, FM, Facility ID 10770, 94.7 MHz)	
Community of License – Houston, Alaska)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 10, 2004

By the Resident Agent, Anchorage Resident Agent Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Chester P. Coleman, c/o American Radio Brokers, Inc. (“Coleman”), San Francisco, California, licensee of stations KAXX (AM),¹ Eagle River, Alaska, and KADX(FM),² Houston, Alaska, apparently willfully and repeatedly violated Sections 73.1125(a) and (e), 73.1740(a)(1) and 73.1745(b) of the Commission's Rules (“Rules”).³ Specifically, we find Coleman apparently liable for failing to maintain main studios, local or toll-free telephone numbers, and minimum operating schedules, for KAXX and KADX, and for departing, without authorization, from the terms of the stations’ authorizations. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“the Act”),⁴ that Coleman is apparently liable for a forfeiture in the amount of twenty-four thousand dollars (\$24,000.00).

¹AM broadcast station, KAXX, Facility ID 53491, is a Class A facility, licensed to operate on 1020 kHz, omnidirectional during daytime hours and directionally for nighttime hours with a directional array, serving the community of Eagle River, Alaska.

²FM broadcast station, KADX, Facility ID 10770, is a Class C2 facility, licensed to operate on 94.7 MHz, serving the community of Houston, Alaska.

³47 C.F.R. §§ 73.1125(a),(e), 73.1740(a)(1) and 73.1745(b).

⁴47 U.S.C. § 503(b).

II. BACKGROUND

2. On October 15, 2002, Anchorage agents attempted to contact staff at the main studio location for stations KAXX and KADX, located at 2509 Eide Street, Anchorage. The building's directory indicated that the radio stations offices were located in Suites 5 and 6. The agents found the studio locked and unoccupied but heard music from within the office. The agents attempted to contact the stations, but the main studio telephone number listed for the stations was reported as out of service by the local telephone system. Later, on October 16, 2002, an Anchorage agent attempted to monitor the broadcasts for both KAXX and KADX but found both stations off the air.

3. On December 12, 2002, an Anchorage agent revisited the KAXX/KADX main studio location, but found the studio locked, unoccupied and dark. The agent contacted the owner of the property who indicated that the suites were leased by Chester Coleman, and that Coleman was about two months delinquent in his rent.

4. On January 22, 2003, the Commission's Media Bureau granted Coleman's request for special temporary authority ("STA") for both KAXX and KADX to remain silent for a period of 90 days.⁵ On July 28, 2003, the Media Bureau subsequently granted a second STA request which permitted KAXX and KADX to remain silent until October 25, 2003.⁶ Both the January STA and the July STA notified Coleman that the "...stations' silent status does not suspend the licensee's obligation to comply with all other relevant Commission rules..."⁷ According to the filings submitted by Coleman to the FCC and reflected in the FCC database, KAXX and KADX were back on the air as of October 22, 2003.

5. On December 10 and 11, 2003, the Anchorage agents monitored KAXX and KADX, but found no broadcast signal for either station. The agents then attempted to visit the main studio for the stations located at 2509 Eide Street, Anchorage, but found no main studio at that location. They also found that the prior phone number was disconnected. No other main studio and no other phone number for KAXX or KADX was listed in any of the local area phone books nor could the agents find any toll-free number listed for KAXX and KADX.

6. Further investigation in February of 2004 by the agents revealed that the lease on the main studio space had been terminated as of June 30, 2003, that all of the equipment had been removed (purportedly by station personnel) on or before June 30, 2003, that the power company had terminated service to the stations and their broadcast tower in October of 2002, and that Coleman's state business license has expired on December 31, 2002.

7. In July of 2004, the Anchorage agents again attempted to ascertain the status of stations KAXX and KADX. The agents detected no signal for either station, found no main studio, no staff, no local or toll free number for either station, and that the electricity to the broadcast tower remained disconnected. In a letter dated November 17, 2004, Coleman informed the Commission that both KAXX and KADX were back on the air. On November 27, 2004, monitoring by an Anchorage agent confirmed that both stations had resumed broadcasting.

⁵See File Nos. BLSTA-20030113CV and BLSTA20021227ACE, granted January 22, 2003 ("January 2003 STA"). In the January 2003 STA it was noted that Coleman stated that he lacked the funds to operate the stations but that these funds were committed to him pursuant to Commission approval of a settlement agreement with another entity.

⁶See File Nos. BLSTA20030724AHA and BLSTA20030724AGZ, granted July 28, 2003 ("July 2003 STA").

⁷January 2003 STA at 2; July 2003 STA at 2.

III. DISCUSSION

8. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) is interpreted to mean simply that the acts or omissions are committed knowingly.⁸ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁹

9. Section 73.1125(a) of the Rules requires the licensee of a broadcast station to maintain a main studio at one of the following locations: (1) within the station’s community of license; (2) at any location within the principal community contour of any AM, FM or TV broadcast station licensed to the station’s community of license; or (3) within twenty-five miles from the reference coordinates of the center of its community of license as described in Section 73.208(a)(1).¹⁰ In addition, the station’s main studio must serve the needs and interests of the residents of the station’s community of license. To fulfill this function, a station must, among other things, maintain a meaningful managerial and staff presence at its main studio.¹¹ The Commission has defined a minimally acceptable “meaningful presence” as a full-time managerial and full-time staff personnel. In addition, there must be “management and staff presence” on a full-time basis during normal business hours to be considered “meaningful.”¹² Although management personnel need not be “chained to their desks” during normal business hours, they must “report to work at the main studio on a daily basis, spend a substantial amount of time there and use the studio as a home base.”¹³ Between October 15, 2002, and June 30, 2003, the site held out by Coleman as the main studio location for both KAXX and KADX had no public access and no staff presence. After June 30, 2003, agents were unable to find any evidence that a main studio existed for either of the stations. The January 2003 STA notified Coleman that KAXX and KADX were required to comply with all relevant Commission rules. Nevertheless, during the term of the STA, Coleman did not maintain the requisite main studio for either station. Then, subsequent to the expiration of the STA on October 23, 2003, and through at least July of 2004, no main studio existed for KAXX and KADX within the station’s community of license; at any location within the station’s principal community contours or within twenty-five miles from the reference coordinates of the center of the station’s communities of license. Coleman knew of the requirement to maintain a main studio. Therefore, the failure to maintain a main studio for the stations was willful. The violation occurred on more than one day, therefore, it was repeated.

⁸Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁹Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, ‘means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.’”

¹⁰47 C.F.R. § 73.1125(a).

¹¹See *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18, *clarified* 3 FCC Rcd 5024, 5026 (1988).

¹²*Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 n.6 (1991), *clarified* 7 FCC Rcd 6800 n.4 (1992).

¹³*Id.*, 7 FCC Rcd at 6802.

10. Section 73.1125(e) requires every broadcast station to maintain a local or a toll-free telephone number in its community of license.¹⁴ As of October 15, 2002, the main studio telephone number for both KAXX and KADX was out of service. Between January 2003 and July 2004, no listings of a local or toll-free number for either station could be located. The January 2003 STA notified Coleman that KAXX and KADX were required to comply with all relevant Commission rules. Therefore, the failure to maintain local or toll-free telephone numbers for the stations was willful. The violation occurred on more than one day, therefore, it was repeated.

11. Section 73.1740(a)(1) of the Commission's Rules,¹⁵ states, in part, that all commercial AM and FM broadcast stations are required to operate not less than two-thirds of the total hours they are authorized to operate between 6 a.m. and 6 p.m. local time and two-thirds of the total hours they are authorized to operate between 6 p.m. and midnight, local time, each day of the week except Sunday. Section 73.1745(b) of the Commission's Rules,¹⁶ states, in part, that any unauthorized departure from an operating schedule which is required to be filed with the FCC in Washington, DC, will be considered as a violation of a material term of the license. Beginning October 16, 2002, and continuing through at least July 23, 2004, KAXX and KADX departed from their authorized operating schedules and failed to operate for the minimal amount of hours required by their authorizations and Section 73.1740. Between January 22, 2003, and April 23, 2003, and between July 28, 2003, and October 25, 2003, the silent status of KAXX and KADX was sanctioned by Commission STA's. The stations' failure to operate at all other times, including after October 25, 2003, was not. Because of the STA's, Coleman was aware of the requirement to resume minimum broadcast operations in accordance with the stations' operating schedule after October 25, 2003. Consequently, his failure to do so was willful. The violation occurred for more than one day, therefore, it was repeated.

12. Based on the evidence before us, we find Coleman willfully and repeatedly violated Sections 73.1125(a) and (e), 73.1740(a)(1) and 73.1745(b) of the Rules by failing to maintain main studios, local or toll-free telephone numbers, and minimum operating schedules, for both KAXX and KADX, and for departing, without authorization, from the terms of the stations' authorizations.

13. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for failing to maintain a main studio and a toll-free phone numbers is \$7,000 per station, total for this violation is \$14,000 and; for failing to maintain a minimum broadcast schedule and unauthorized discontinuance of operation is \$5000 per station, total for this violation is \$10,000.¹⁷ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁸ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, a \$24,000 forfeiture is warranted.

¹⁴47 C.F.R. § 73.1125(e).

¹⁵47 C.F.R. § 73.1740(a)(1).

¹⁶47 C.F.R. § 73.1745(b).

¹⁷12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁸47 U.S.C. § 503(b)(2)(D).

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules, that Chester P. Coleman c/o American Radio Brokers, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty-four thousand dollars (\$24,000) for willful and repeated violation of Sections 73.1125(a) and (e), 73.1740(a)(1) and 73.1745(b) of the Rules by failing to maintain, in both stations cases, a main studio, a minimum operating schedule and unauthorized departure from the terms of the station authorizations.¹⁹

15. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Chester P. Coleman c/o American Radio Brokers, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

17. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Anchorage Resident Agent Office, P.O. Box 221849, Anchorage, Alaska 99522-1849 and must include the NAL/Acct. No. referenced in the caption.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁰

¹⁹47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 73.1125(a),(e), 73.1740(a)(1) and 73.1745(b).

²⁰See 47 C.F.R. § 1.1914.

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20. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to: Chester P. Coleman c/o American Radio Brokers, Inc., 1255 Post Street, Suite 1011, San Francisco, CA 94109; Chester P. Coleman c/o American Radio Brokers, Inc., 1255 Post Street, Suite 1023, San Francisco, CA 94109.

FEDERAL COMMUNICATIONS COMMISSION

David J. Charlton
Resident Agent
Anchorage Resident Agent Office
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